REMARKS

Claims 1 and 3-49 are currently pending in the application. By this amendment, claims 1, 26, and 39 are amended for the Examiner's consideration. The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided in the claims as originally filed, at FIGS. 2C-2E, and at paragraphs 0022, 0025, and 0033-0050 of Applicants' published application (i.e., U.S. Pub. No. 2005/0071307). Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Interview Summary

Applicants thank Examiner Kawsar for the courtesy extended in granting and conducting an interview with Applicants' representative on August 24, 2009 ("Interview"). In the Interview, the objection to the specification and the rejection of claim 39 under 35 USC §101 were discussed. Also discussed was the interpretation of the Maso and Fraenkel references used in the 35 USC §103(a) rejection. Agreement with respect to allowable claims language was not reached.

Objection to the Specification

The specification is objected to for failing to provide antecedent basis for the recitation "computer useable medium" in claim 39. This objection is respectfully traversed.

By this response, claim 39 has been amended to omit the language "computer useable medium," and instead recites "computer program product comprising computer program code stored on a storage medium...". As the language at issue is no longer in claim 39, the objection is moot.

Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

35 U.S.C. §101 Rejection

Claim 39 is rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

The Examiner asserts that claim 39 is directed to non-statutory subject matter because the recitation "computer useable medium" covers signals, carrier waves, and other forms of transmission media, and that this renders claim 39 unpatentable under §101. By this response, claim 39 has been amended to recite "computer program product comprising computer program code stored on a storage medium...". Applicants submit that a computer program code stored on a storage medium is statutory subject matter (see, e.g., MPEP §2106.01).

Accordingly, Applicants respectfully request that the §101 rejection of claim 39 be withdrawn.

35 U.S.C. §103 Rejection

Claims 1 and 2-49 are rejected under 35 U.S.C. §103(a) for being unpatentable over U.S. Publication No. 2003/0061265 issued to Maso, *et al.* ("Maso") in view of U.S. Patent No. 6,738,933 issued to Fraenkel, *et al.* ("Fraenkel"). Applicants note that claim 2 is canceled, and therefore assume that claims 1 and 3-49 are rejected (not claims 1 and 2-49 as set forth at page 3 of the Office Action). In any event, this rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, all claim limitations must be taught or suggested by the prior art. *See, In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974); *see also, In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).[1] If the prior art reference(s) do not teach or suggest all of the claim limitations, Office personnel must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art (MPEP 2141). Applicants submit that no proper combination of the applied art teaches or suggests each and every feature of the claimed invention.

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[1] While the *KSR* court rejected a rigid application of the teaching, suggestion, or motivation ("TSM") test in an obviousness inquiry, the [Supreme] Court acknowledged the importance of identifying "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" in an obviousness determination. *Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, 492

Independent Claims

The present invention relates to transaction processing systems, and more particularly, to autonomic control and administration of individual transactions or groups of transactions based upon their unique current resource usage characteristics relative to the present status of one or more present characteristics of the transaction processing system or the host computer system. More specifically, independent claim 1 recites, in pertinent part:

> ... implementing an interval criterion matrix using the server, wherein the interval criterion matrix is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Also, independent claim 19 recites, in pertinent part:

> ... implementing an interval criterion matrix using the server, wherein the interval criterion matrix is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Moreover, independent claim 26 recites, in pertinent part:

> ... a means for implementing an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Additionally, independent claim 32 recites, in pertinent part:

> ... a means for implementing an interval criterion matrix, which is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source.

Furthermore, independent claim 39 recites, in pertinent part:

F.3d 1350, 1356-1357 (Fed. Cir. 2007) (quoting *KSR International Co. v. Teleflex Inc.,* 127 S.Ct. 1727, 1731 (2007)).

... a fifth computer code to implement an interval criterion
matrix, which is a source of configurable data and is created by an
administrator or accessed from a pre-built electronic source.

The Examiner asserts that Maso teaches all of the features of independent claims 1, 19,

26, 32, and 39, except for implementing an interval criterion matrix. Applicants agree that Maso

does not teach *implementing an interval criterion matrix using the server, wherein the interval*

criterion matrix is a source of configurable data and is created by an administrator or accessed

from a pre-built electronic source, as recited in the claimed invention. However, the Examiner

asserts that Fraenkel teaches this feature at col. 3, lines 1-22 and col. 25, lines 21-29. The

Examiner concludes that it would have been obvious to combine the teachings of Fraenkel into

the method of Maso, and that the combined teachings render the claimed invention obvious.

Applicants respectfully disagree.

Contrary to the Examiner's assertions, Fraenkel does not disclose or suggest

implementing an interval criterion matrix using the server, wherein the interval criterion matrix

is a source of configurable data and is created by an administrator or accessed from a pre-built

electronic source, as recited in the claimed invention. Instead, Fraenkel provides software

systems to monitor post-deployment operations of a web site system or other transactional

server. (Col. 2, lines 28-50.) During the monitoring session, each agent computer generates

performance data that indicates one or more characteristics of a transactional server's

performance. (Col. 3, lines 24-32.) This data is reported so that a user can view and compare

performance of a transactional server from different operator-specified locations, organizations,

ISPs, or attribute types. (Col. 3, lines 44-60.) For example, a report may be generated for a user

on transactional health and the report may be broken down according to a computer attribute,

such as geographic location. (Col. 17, lines 14-34.) Fraenkel allows this data to be transmitted

when a transaction fails or when path delays between the agent computer and the transactional

server exceeds a preprogrammed threshold. (Col. 4, lines 11-23.)

However, Fraenkel makes no mention of an interval criterion matrix, much less of an

interval criterion matrix that is a source of configurable data and is created by an administrator or

accessed from a pre-built electronic source. For example, the passages of Fraenkel identified by the Examiner are reproduced below, and do not disclose an interval criterion matrix as recited and described in the claimed invention.

> In accordance with another aspect of the invention, the controller provides a user interface and various functions for a user to remotely select the agent computer(s) to include in a monitoring session, assign attributes to such computers (such as the location, organization, ISP and/or configuration of each computer), and assign transactions and execution schedules to such computers. The execution schedules may be periodic or repetitive schedules, (e.g., every hour, Monday through Friday), so that the transactional server is monitored on a continuous or near-continuous basis. The controller preferably represents the monitoring session on the display screen as an expandable tree in which the transactions and execution schedules are represented as children of the corresponding computers. Once a monitoring session has been defined, the controller dispatches the transactions and execution schedules to the respective agent computers over the Internet or other network. The controller also preferably includes functions for the user to record and edit transactions, and to define alert conditions for generating real-time alert notifications. The controller may optionally be implemented as a hosted application on an Internet or intranet site, in which case users may be able to remotely set up monitoring sessions using an ordinary web browser.

(Fraenkel, col. 3, lines 1-22).

> During a server resource monitoring session the server agent 166 polls the various components of the transactional server 30 for the parameters associated with the server resources according to either a default schedule or a schedule created by the user. The schedule may include polling monitored servers every five seconds, every thirty seconds, etc. Once created, a server resource monitoring session, in one embodiment, runs continuously according to its specified schedule until the user ends the monitoring session.

(Fraenkel, col. 25, lines 21-29).

The above-noted passages of Fraenkel do not even mention a matrix, much less an interval criterion matrix, much less an interval criterion matrix that is a source of configurable

data and is created by an administrator or accessed from a pre-built electronic source. Accordingly, while Fraenkel provides a monitoring system, Applicants submit that Fraenkel does not teach *implementing an interval criterion matrix using the server, wherein the interval criterion matrix is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source*, as recited in the claimed invention.

In contrast to Fraenkel, exemplary embodiments of the invention include implementation of an interval criterion matrix. An example of an interval criterion matrix is shown in Table 1 of Applicants' specification, and is described in further detail with respect to FIGS. 2A-2EA, particularly at paragraphs 0024, 0028, 0029, and 0045 of Applicants' published application (i.e., US 2005/0071307). Applicants submit that Fraenkel does not teach *implementing an interval criterion matrix using the server, wherein the interval criterion matrix is a source of configurable data and is created by an administrator or accessed from a pre-built electronic source*, as recited in the claimed invention and as described in the specification. As the Examiner admits that Maso also fails to teach this feature, it follows that the applied art does not teach or suggest all of the features of the independent claims. Therefore, the applied art does not render independent claims 1, 19, 26, 32, and 39 unpatentable.

Moreover, Applicants submit that independent claims 1, 26, and 39 recite additional features that are not taught by any proper combination of the applied art (i.e., Maso and Fraenkel). More specifically, independent claim 1 recites, in pertinent part:

> defining at least one criterion including all of: a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic

Independent claim 26 recites, in pertinent part:

> a means for defining at least one criterion including all of: a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic of the transaction processing system

Independent claim 39 recites, in pertinent part:

> a first computer code to define at least one criterion
> including all of: a system level criterion, a transaction level
> criterion, a multi-transactional level criterion, and a workload
> characteristic of the transaction processing system;

The Examiner asserts that Maso discloses defining criterion at paragraphs 0021-0023 and 0089. Notwithstanding, as discussed in the above-noted Interview, Applicants submit that Maso does not disclose or suggest a criterion including all of: a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic.

Instead, Maso discloses monitoring system performance metrics. At paragraph 0089, Maso describes an Instrumentation API (Application Programming Interface). At paragraphs 0021-0023, Maso discloses individual features of an Instrumentation API. More specifically, Maso discloses:

> [0089] The Instrumentation API is easily programmed to create "hooks"
> to monitor unlimited tasks in a standard or custom application.
> Administrators set parameters or metrics to create customized views that
> monitor the activity specific to their enterprise. Such metrics include
> load variations, average response time specific to a task occurring
> outside of the web page, and other enterprise specific issues. Specific
> risk and problem areas of any application can be easily identified and
> anticipated using P.A.M. Administrators can also set metrics to respond
> only when a prescribed threshold is reached. In this way, non-critical
> problems are addressed at low traffic times.
>
> ...
>
> [0018] The Instrumentation API features:
>
> > [0019] Customizable API allows one to instrument and monitor
> > unlimited tasks within standard or custom code
> >
> > [0020] Instrumentation configuration may be modified in real time
> >
> > [0021] Instrument anything (Java, Perl, Microsoft COM)
> >
> > [0022] Instrument system performance metrics, including: SNMP
> > statistics, Windows NT/2000, Per-fmon metrics
> >
> > [0023] Gather fine-grained metrics for specific ASP and JSP pages,
> > Servlets, or EJB's within any enterprise.

The above-noted passages of Maso do not disclose the criterion recited and described in Applicants' invention. Particularly, the above-noted passages make no mention of a system level criterion, a transaction level criterion, a multi-transactional level criterion, <u>and</u> a workload characteristic.

In contrast to Maso, exemplary implementations of the invention define a criterion that includes all of a system level criterion, a transaction level criterion, a multi-transactional level criterion, and a workload characteristic. These criterion are described, for example, at paragraphs 0022, 0025, and 0033-0050 of Applicants' published application (i.e., US 2005/0071307). Maso, on the other hand, does not disclose all of the recited criterion. Applicants submit that Fraenkel also fails to teach this feature; nor has the Examiner asserted that Fraenkel teaches this feature. Therefore, Maso and Fraenkel fail to teach this recited feature of claims 1, 26, and 39.

For the above-noted reasons, Applicants submit that the applied art does not disclose or suggest the combinations of features recited in independent claims 1, 19, 26, 32, and 39. Therefore, the applied art does not render the claimed invention unpatentable.

<u>Dependent Claims</u>

Claims 3-18, 20-25, 27-31, 33-38, and 46-49 are dependent claims, depending on independent claims 1, 19, 26, and 32, respectively. For this reason, Applicant submits that these claims are thus distinguishable based on respective independent claims 1, 19, 26, and 32.

Accordingly, Applicant respectfully requests the §103 rejection of claims 1 and 3-49 be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 09-0457.

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